

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ELENA PALAU,

Plaintiff,

-against-

CRUNCH, LLC,

Defendant.

Civil Action No. 16 -CV-06358

**DEFENDANT'S ANSWER AND  
DEFENSES TO PLAINTIFF'S  
COMPLAINT**

Defendant Crunch, LLC (hereinafter "Defendant"), by and through its undersigned attorneys, Jackson Lewis P.C., respectfully submits the following Answer and Defenses to Plaintiff Elena Palau's (hereinafter "Plaintiff") Complaint in the above-captioned action.

**AS TO THE "NATURE OF THE ACTION"**

1. Defendant denies each and every allegation set forth in Paragraph "1" of Plaintiff's Complaint, except avers that Plaintiff alleges that Defendant violated: (1) the Fair Labor Standards Act § 207 et seq. ("FLSA"); (2) the New York Labor Law § 190 et seq. ("NYLL"); (3) the Americans with Disabilities Act of 1990 ("ADA"); (4) the Family and Medical Leave Act, 29 U.S.C. 2601 et seq., ("FMLA"); (5) the New York State Human Rights Law § 290 et seq., ("NYSHRL"); and (6) the New York City Human Rights Law § 8-107 et seq., ("NYCHRL").

2. Defendant denies each and every allegation set forth in Paragraph "2" of Plaintiff's Complaint.

**AS TO "JURISDICTION AND VENUE"**

3. No response is required to the extent the allegations set forth in Paragraph "3" of Plaintiff's Complaint call for a legal conclusion. To the extent a response is required,

Defendant denies each and every allegation set forth in Paragraph “3” of Plaintiff’s Complaint, except avers that jurisdiction is proper.

4. No response is required to the extent the allegations set forth in Paragraph “4” of Plaintiff’s Complaint call for a legal conclusion. To the extent a response is required, Defendant denies each and every allegation set forth in Paragraph “4” of Plaintiff’s Complaint, except avers that Plaintiff filed a Charge of Discrimination with the United States Equal Employment Opportunity Commission (“EEOC”) on or about October 14, 2015.

5. No response is required to the extent the allegations set forth in Paragraph “5” of Plaintiff’s Complaint call for a legal conclusion. To the extent a response is required, Defendant denies each and every allegation set forth in Paragraph “5” of Plaintiff’s Complaint, except avers that venue is proper.

**AS TO “PARTIES”**

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “6” of Plaintiff’s Complaint.

7. Defendant denies each and every allegation set forth in Paragraph “7” of Plaintiff’s Complaint, except avers that Plaintiff was hired by Defendant effective September 19, 2012 as a Corporate Services Coordinator and Plaintiff was classified as a non-exempt employee.

8. Defendant admits the allegations set forth in Paragraph “8” of Plaintiff’s Complaint.

9. Defendant denies each and every allegation set forth in Paragraph “9” of Plaintiff’s Complaint, and avers that Defendant operates more than 50 gyms around the United States.

10. Defendant denies each and every allegation set forth in Paragraph “10” of Plaintiff’s Complaint, except avers that Defendant’s corporate headquarters are located at 220 W 19th St, New York, NY 10011.

11. Defendant denies each and every allegation set forth in Paragraph “11” of Plaintiff’s Complaint, except avers that Plaintiff was employed with Defendant between September 19, 2012 and January 8, 2015 at Defendant’s corporate headquarters, located at 220 W 19th St, New York, NY 10011.

12. No response is required to the extent the allegations set forth in Paragraph “12” of Plaintiff’s Complaint call for a legal conclusion. To the extent a response is required, Defendant denies each and every allegation set forth in Paragraph “12.”

13. Defendant denies each and every allegation set forth in Paragraph “13” of Plaintiff’s Complaint, and avers that Defendant has annual revenue of not less than \$1 million and operates more than 50 gyms around the United States.

**AS TO “FACTS”**

14. Defendant denies each and every allegation set forth in Paragraph “14” of Plaintiff’s Complaint, and avers that Defendant operates more than 50 gyms around the United States.

15. Defendant denies each and every allegation set forth in Paragraph “15” of Plaintiff’s Complaint.

16. Defendant denies each and every allegation set forth in Paragraph “16” of Plaintiff’s Complaint, except avers that Plaintiff was employed with Defendant between September 19, 2012 and January 8, 2015, and was classified as a non-exempt employee.

17. Defendant denies each and every allegation set forth in Paragraph “17” of Plaintiff’s Complaint, except avers that Plaintiff had responsibility for enrolling corporate clients and communicating with them about their accounts and renewals.

18. Defendant denies each and every allegation set forth in Paragraph “18” of Plaintiff’s Complaint.

19. Defendant denies each and every allegation set forth in Paragraph “19” of Plaintiff’s Complaint.

20. Defendant denies each and every allegation set forth in Paragraph “20” of Plaintiff’s Complaint.

21. Defendant denies each and every allegation set forth in Paragraph “21” of Plaintiff’s Complaint, except avers that Plaintiff was classified by Defendant as a non-exempt employee and was eligible to earn sales commissions.

22. Defendant denies each and every allegation set forth in Paragraph “22” of Plaintiff’s Complaint.

23. Defendant denies each and every allegation set forth in Paragraph “23” of Plaintiff’s Complaint.

24. Defendant denies each and every allegation set forth in Paragraph “24” of Plaintiff’s Complaint.

25. Defendant denies each and every allegation set forth in Paragraph “25” of Plaintiff’s Complaint.

26. Defendant denies each and every allegation set forth in Paragraph “26” of Plaintiff’s Complaint.

27. Defendant denies each and every allegation set forth in Paragraph “27” of Plaintiff’s Complaint.

28. Defendant denies each and every allegation set forth in Paragraph “28” of Plaintiff’s Complaint.

29. Defendant denies each and every allegation set forth in Paragraph “29” of Plaintiff’s Complaint.

30. Defendant denies each and every allegation set forth in Paragraph “30” of Plaintiff’s Complaint.

31. Defendant denies each and every allegation set forth in Paragraph “31” of Plaintiff’s Complaint.

32. Defendant denies each and every allegation set forth in Paragraph “32” of Plaintiff’s Complaint.

33. Defendant denies each and every allegation set forth in Paragraph “33” of Plaintiff’s Complaint.

34. Defendant denies each and every allegation set forth in Paragraph “34” of Plaintiff’s Complaint.

35. Defendant denies each and every allegation set forth in Paragraph “35” of Plaintiff’s Complaint.

36. Defendant denies each and every allegation set forth in Paragraph “36” of Plaintiff’s Complaint.

37. Defendant denies each and every allegation set forth in Paragraph “37” of Plaintiff’s Complaint.

38. Defendant denies each and every allegation set forth in Paragraph “38” of Plaintiff’s Complaint.

39. Defendant denies each and every allegation set forth in Paragraph “39” of Plaintiff’s Complaint.

40. Defendant denies each and every allegation set forth in Paragraph “40” of Plaintiff’s Complaint.

41. Defendant denies each and every allegation set forth in Paragraph “41” of Plaintiff’s Complaint.

42. Defendant denies each and every allegation set forth in Paragraph “42” of Plaintiff’s Complaint.

43. Defendant denies each and every allegation set forth in Paragraph “43” of Plaintiff’s Complaint.

44. Defendant denies each and every allegation set forth in Paragraph “44” of Plaintiff’s Complaint.

45. Defendant denies each and every allegation set forth in Paragraph “45” of Plaintiff’s Complaint.

46. Defendant denies each and every allegation set forth in Paragraph “46” of Plaintiff’s Complaint.

47. Defendant denies each and every allegation set forth in Paragraph “47” of Plaintiff’s Complaint.

48. Defendant denies each and every allegation set forth in Paragraph “48” of Plaintiff’s Complaint.

49. Defendant denies each and every allegation set forth in Paragraph “49” of Plaintiff’s Complaint.

50. Defendant denies each and every allegation set forth in Paragraph “50” of Plaintiff’s Complaint.

51. Defendant denies each and every allegation set forth in Paragraph “51” of Plaintiff’s Complaint.

52. Defendant denies each and every allegation set forth in Paragraph “52” of Plaintiff’s Complaint.

53. Defendant denies each and every allegation set forth in Paragraph “53” of Plaintiff’s Complaint.

54. Defendant denies each and every allegation set forth in Paragraph “54” of Plaintiff’s Complaint.

55. Defendant denies each and every allegation set forth in Paragraph “55” of Plaintiff’s Complaint.

56. Defendant denies each and every allegation set forth in Paragraph “56” of Plaintiff’s Complaint.

57. Defendant denies each and every allegation set forth in Paragraph “57” of Plaintiff’s Complaint.

58. Defendant denies each and every allegation set forth in Paragraph “58” of Plaintiff’s Complaint.

59. Defendant denies each and every allegation set forth in Paragraph “59” of Plaintiff’s Complaint.

60. Defendant denies each and every allegation set forth in Paragraph “60” of Plaintiff’s Complaint.

61. Defendant denies each and every allegation set forth in Paragraph “61” of Plaintiff’s Complaint.

62. Defendant denies each and every allegation set forth in Paragraph “62” of Plaintiff’s Complaint.

63. Defendant denies each and every allegation set forth in Paragraph “63” of Plaintiff’s Complaint.

64. Defendant denies each and every allegation set forth in Paragraph “64” of Plaintiff’s Complaint.

65. Defendant denies each and every allegation set forth in Paragraph “65” of Plaintiff’s Complaint.

66. Defendant denies each and every allegation set forth in Paragraph “66” of Plaintiff’s Complaint.

67. Defendant denies each and every allegation set forth in Paragraph “67” of Plaintiff’s Complaint.

68. Defendant denies each and every allegation set forth in Paragraph “68” of Plaintiff’s Complaint.

69. Defendant denies each and every allegation set forth in Paragraph “69” of Plaintiff’s Complaint, except avers that Plaintiff requested and was granted an FMLA leave of absence in October 2013.

70. Defendant denies each and every allegation set forth in Paragraph “70” of Plaintiff’s Complaint.

71. Defendant denies each and every allegation set forth in Paragraph “71” of Plaintiff’s Complaint.

72. Defendant denies each and every allegation set forth in Paragraph “72” of Plaintiff’s Complaint.

73. Defendant denies each and every allegation set forth in Paragraph “73” of Plaintiff’s Complaint.

74. Defendant denies each and every allegation set forth in Paragraph “74” of Plaintiff’s Complaint.



75. Defendant denies each and every allegation set forth in Paragraph “75” of Plaintiff’s Complaint.

76. Defendant denies each and every allegation set forth in Paragraph “76” of Plaintiff’s Complaint.

77. Defendant denies each and every allegation set forth in Paragraph “77” of Plaintiff’s Complaint.

78. Defendant denies each and every allegation set forth in Paragraph “78” of Plaintiff’s Complaint.

79. Defendant denies each and every allegation set forth in Paragraph “79” of Plaintiff’s Complaint.

80. Defendant denies each and every allegation set forth in Paragraph “80” of Plaintiff’s Complaint.

81. Defendant denies each and every allegation set forth in Paragraph “81” of Plaintiff’s Complaint.

82. Defendant denies each and every allegation set forth in Paragraph “82” of Plaintiff’s Complaint.

83. Defendant denies each and every allegation set forth in Paragraph “83” of Plaintiff’s Complaint.

84. Defendant denies each and every allegation set forth in Paragraph “84” of Plaintiff’s Complaint.

85. Defendant denies each and every allegation set forth in Paragraph “85” of Plaintiff’s Complaint, and refers to the document referenced for a true and complete statement of its contents.

86. Defendant denies each and every allegation set forth in Paragraph “86” of Plaintiff’s Complaint.

87. Defendant denies each and every allegation set forth in Paragraph “87” of Plaintiff’s Complaint.

88. Defendant denies each and every allegation set forth in Paragraph “88” of Plaintiff’s Complaint, and refers to the document referenced for a true and complete statement of its contents.

89. Defendant denies each and every allegation set forth in Paragraph “89” of Plaintiff’s Complaint.

90. Defendant denies each and every allegation set forth in Paragraph “90” of Plaintiff’s Complaint, and refers to the document referenced for a true and complete statement of its contents.

91. Defendant denies each and every allegation set forth in Paragraph “91” of Plaintiff’s Complaint.

92. Defendant denies each and every allegation set forth in Paragraph “92” of Plaintiff’s Complaint.

93. Defendant denies each and every allegation set forth in Paragraph “93” of Plaintiff’s Complaint.

94. Defendant denies each and every allegation set forth in Paragraph “94” of Plaintiff’s Complaint.

95. Defendant denies each and every allegation set forth in Paragraph “95” of Plaintiff’s Complaint.

**AS TO A "FIRST CLAIM"**  
**(Violations OF The FLSA for Unpaid Overtime Premium Pay)**

96. Defendant repeats and realleges each of its denials, averments and other responses to Paragraphs "1" through "95" of Plaintiff's Complaint.

97. No response is required to the extent the allegations set forth in Paragraph "97" of Plaintiff's Complaint call for a legal conclusion. To the extent a response is required, Defendant denies each and every allegation set forth in Paragraph "97" of Plaintiff's Complaint.

98. Defendant denies each and every allegation set forth in Paragraph "98" of Plaintiff's Complaint, and avers that jurisdiction is proper.

99. No response is required to the extent the allegations set forth in Paragraph "99" of Plaintiff's Complaint call for a legal conclusion. To the extent a response is required, Defendant denies each and every allegation set forth in Paragraph "99" of Plaintiff's Complaint.

100. No response is required to the extent the allegations set forth in Paragraph "100" of Plaintiff's Complaint call for a legal conclusion. To the extent a response is required, Defendant denies each and every allegation set forth in Paragraph "100" of Plaintiff's Complaint.

101. Defendant denies each and every allegation set forth in Paragraph "101" of Plaintiff's Complaint.

102. Defendant denies each and every allegation set forth in Paragraph "102" of Plaintiff's Complaint.

**AS TO A "SECOND CLAIM"**  
**(Violations OF The NYLL for Unpaid Overtime Premium Pay)**

103. Defendant repeats and realleges each of its denials, averments and other responses to Paragraphs "1" through "102" of Plaintiff's Complaint.

104. No response is required to the extent the allegations set forth in Paragraph “104” of Plaintiff’s Complaint call for a legal conclusion. To the extent a response is required, Defendant denies each and every allegation set forth in Paragraph “104” of Plaintiff’s Complaint.

105. Defendant denies each and every allegation set forth in Paragraph “105” of Plaintiff’s Complaint.

106. Defendant denies each and every allegation set forth in Paragraph “106” of Plaintiff’s Complaint.

**AS TO A “THIRD CLAIM”**  
**(Retaliation in Violation of the FLSA)**

107. Defendant repeats and realleges each of its denials, averments and other responses to Paragraphs “1” through “106” of Plaintiff’s Complaint.

108. No response is required to the extent the allegations set forth in Paragraph “108” of Plaintiff’s Complaint call for a legal conclusion. To the extent a response is required, Defendant denies each and every allegation set forth in Paragraph “108” of Plaintiff’s Complaint.

109. No response is required to the extent the allegations set forth in Paragraph “109” of Plaintiff’s Complaint call for a legal conclusion. To the extent a response is required, Defendant denies each and every allegation set forth in Paragraph “109” of Plaintiff’s Complaint.

110. Defendant denies each and every allegation set forth in Paragraph “110” of Plaintiff’s Complaint.

111. Defendant denies each and every allegation set forth in Paragraph “111” of Plaintiff’s Complaint.

112. Defendant denies each and every allegation set forth in Paragraph “112” of Plaintiff’s Complaint.

113. Defendant denies each and every allegation set forth in Paragraph “113” of Plaintiff’s Complaint.

114. Defendant denies each and every allegation set forth in Paragraph “114” of Plaintiff’s Complaint.

**AS TO A “FOURTH CLAIM”**  
**(Retaliation Under the NYLL)**

115. Defendant repeats and realleges each of its denials, averments and other responses to Paragraphs “1” through “114” of Plaintiff’s Complaint.

116. Defendant denies each and every allegation set forth in Paragraph “116” of Plaintiff’s Complaint.

117. Defendant denies each and every allegation set forth in Paragraph “117” of Plaintiff’s Complaint.

118. Defendant denies each and every allegation set forth in Paragraph “118” of Plaintiff’s Complaint.

**AS TO A “FIFTH CLAIM”**  
**(Disability Discrimination in Violation of the Americans with Disabilities Act of 1990, 42**  
**U.S.C. § 12101 et seq.)**

119. Defendant repeats and realleges each of its denials, averments and other responses to Paragraphs “1” through “118” of Plaintiff’s Complaint.

120. Defendant denies each and every allegation set forth in Paragraph “120” of Plaintiff’s Complaint.

121. Defendant denies each and every allegation set forth in Paragraph “121” of Plaintiff’s Complaint.

122. Defendant denies each and every allegation set forth in Paragraph “122” of Plaintiff’s Complaint.

123. Defendant denies each and every allegation set forth in Paragraph “123” of Plaintiff’s Complaint.

124. Defendant denies each and every allegation set forth in Paragraph “124” of Plaintiff’s Complaint.

125. Defendant denies each and every allegation set forth in Paragraph “125” of Plaintiff’s Complaint.

126. Defendant denies each and every allegation set forth in Paragraph “126” of Plaintiff’s Complaint.

127. Defendant denies each and every allegation set forth in Paragraph “127” of Plaintiff’s Complaint.

128. Defendant denies each and every allegation set forth in Paragraph “128” of Plaintiff’s Complaint.

129. Defendant denies each and every allegation set forth in Paragraph “129” of Plaintiff’s Complaint.

130. Defendant denies each and every allegation set forth in Paragraph “130” of Plaintiff’s Complaint.

131. Defendant denies each and every allegation set forth in Paragraph “131” of Plaintiff’s Complaint.

132. Defendant denies each and every allegation set forth in Paragraph “132” of Plaintiff’s Complaint.

**AS TO A “SIXTH CLAIM”**  
**(Retaliation Under The ADA)**

133. Defendant repeats and realleges each of its denials, averments and other responses to Paragraphs “1” through “132” of Plaintiff’s Complaint.

134. Defendant denies each and every allegation set forth in Paragraph “134” of Plaintiff’s Complaint.

135. Defendant denies each and every allegation set forth in Paragraph “135” of Plaintiff’s Complaint.

136. Defendant denies each and every allegation set forth in Paragraph “136” of Plaintiff’s Complaint.

137. Defendant denies each and every allegation set forth in Paragraph “137” of Plaintiff’s Complaint.

**AS TO A “SEVENTH CLAIM”**  
**(Violation Of The Family Medical Leave Act)**

138. Defendant repeats and realleges each of its denials, averments and other responses to Paragraphs “1” through “137” of Plaintiff’s Complaint.

139. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “139” of Plaintiff’s Complaint. To the extent a response is required, Defendant denies each and every allegation set forth in Paragraph “139” of Plaintiff’s Complaint.

140. No response is required to the extent the allegations set forth in Paragraph “140” of Plaintiff’s Complaint call for a legal conclusion. To the extent a response is required, Defendant denies each and every allegation set forth in Paragraph “140” of Plaintiff’s Complaint.

141. Defendant denies each and every allegation set forth in Paragraph “141” of Plaintiff’s Complaint, except avers that Plaintiff requested and was granted an FMLA leave of absence in October 2013.

142. Defendant denies each and every allegation set forth in Paragraph “142” of Plaintiff’s Complaint.

143. Defendant denies each and every allegation set forth in Paragraph “143” of Plaintiff’s Complaint.

144. Defendant denies each and every allegation set forth in Paragraph “144” of Plaintiff’s Complaint.

**AS TO AN “EIGHTH CLAIM”**  
**(Disability Discrimination Under The New York State Human Rights Law)**

145. Defendant repeats and realleges each of its denials, averments and other responses to Paragraphs “1” through “144” of Plaintiff’s Complaint.

146. No response is required to the extent the allegations set forth in Paragraph “146” of Plaintiff’s Complaint call for a legal conclusion. To the extent a response is required, Defendant denies each and every allegation set forth in Paragraph “146” of Plaintiff’s Complaint.

147. No response is required to the extent the allegations set forth in Paragraph “147” of Plaintiff’s Complaint call for a legal conclusion. To the extent a response is required, Defendant denies each and every allegation set forth in Paragraph “147” of Plaintiff’s Complaint.

148. Defendant denies each and every allegation set forth in Paragraph “148” of Plaintiff’s Complaint.

149. Defendant denies each and every allegation set forth in Paragraph “149” of Plaintiff’s Complaint.

150. Defendant denies each and every allegation set forth in Paragraph “150” of Plaintiff’s Complaint.

151. Defendant denies each and every allegation set forth in Paragraph “151” of Plaintiff’s Complaint.



**AS TO A “NINTH CLAIM”**  
**(Retaliation Under The New York State Human Rights Law)**

152. Defendant repeats and realleges each of its denials, averments and other responses to Paragraphs “1” through “151” of Plaintiff’s Complaint.

153. Defendant denies each and every allegation set forth in Paragraph “153” of Plaintiff’s Complaint.

154. Defendant denies each and every allegation set forth in Paragraph “154” of Plaintiff’s Complaint.

155. Defendant denies each and every allegation set forth in Paragraph “155” of Plaintiff’s Complaint.

156. Defendant denies each and every allegation set forth in Paragraph “156” of Plaintiff’s Complaint.

**AS TO A “TENTH CLAIM”**  
**(Disability Discrimination Under The New York City Human Rights Law, § 8-107(1)(a))**

157. Defendant repeats and realleges each of its denials, averments and other responses to Paragraphs “1” through “156” of Plaintiff’s Complaint.

158. No response is required to the extent the allegations set forth in Paragraph “158” of Plaintiff’s Complaint call for a legal conclusion. To the extent a response is required, Defendant denies each and every allegation set forth in Paragraph “158” of Plaintiff’s Complaint.

159. No response is required to the extent the allegations set forth in Paragraph “159” of Plaintiff’s Complaint call for a legal conclusion. To the extent a response is required, Defendant denies each and every allegation set forth in Paragraph “159” of Plaintiff’s Complaint.

160. Defendant denies each and every allegation set forth in Paragraph “160” of Plaintiff’s Complaint.

161. Defendant denies each and every allegation set forth in Paragraph “161” of Plaintiff’s Complaint.

162. Defendant denies each and every allegation set forth in Paragraph “162” of Plaintiff’s Complaint.

163. Defendant denies each and every allegation set forth in Paragraph “163” of Plaintiff’s Complaint.

**AS TO AN “ELEVENTH CLAIM”**  
**(Retaliation Under the New York City Human Rights Law, § 8-107(1)(7))**

164. Defendant repeats and realleges each of its denials, averments and other responses to Paragraphs “1” through “163” of Plaintiff’s Complaint.

165. Defendant denies each and every allegation set forth in Paragraph “165” of Plaintiff’s Complaint.

166. Defendant denies each and every allegation set forth in Paragraph “166” of Plaintiff’s Complaint.

167. Defendant denies each and every allegation set forth in Paragraph “167” of Plaintiff’s Complaint.

168. Defendant denies each and every allegation set forth in Paragraph “168” of Plaintiff’s Complaint.

169. Defendant denies each and every allegation set forth in Paragraph “169” of Plaintiff’s Complaint.

**AS TO A “TWELFTH CLAIM”**  
**(Interference With Protected Rights Under The New York City Human Rights Law, § 8-107(19))**

170. Defendant repeats and realleges each of its denials, averments and other responses to Paragraphs “1” through “169” of Plaintiff’s Complaint.

171. Defendant denies each and every allegation set forth in Paragraph “171” of Plaintiff’s Complaint.

**AS TO A “THIRTEENTH CLAIM”**  
**(Aiding And Abetting Under The New York City Human Rights Law, § 8-107(6))**

172. Defendant repeats and realleges each of its denials, averments and other responses to Paragraphs “1” through “171” of Plaintiff’s Complaint.

173. Defendant denies each and every allegation set forth in Paragraph “173” of Plaintiff’s Complaint.

**AS TO A “FOURTEENTH CLAIM”**  
**(Defendant Crunch, LLC Is Liable Under the New York City Human Rights Law, § 8-107(13)(b))**

174. Defendant repeats and realleges each of its denials, averments and other responses to Paragraphs “1” through “173” of Plaintiff’s Complaint.

175. Defendant denies each and every allegation set forth in Paragraph “175” of Plaintiff’s Complaint.

176. Defendant denies each and every allegation set forth in Paragraph “176” of Plaintiff’s Complaint.

177. Defendant denies each and every allegation set forth in Paragraph “177” of Plaintiff’s Complaint, except avers that Ms. Askinasi was Plaintiff’s immediate supervisor during Plaintiff’s employment with Defendant.

178. Defendant denies each and every allegation set forth in Paragraph “178” of Plaintiff’s Complaint.

179. Defendant denies each and every allegation set forth in Paragraph “179” of Plaintiff’s Complaint, except avers that Ms. Wogas has been employed by Defendant.

180. Defendant denies each and every allegation set forth in Paragraph “180” of Plaintiff’s Complaint, except avers that Ms. Wogas has had supervisory responsibilities for Defendant.

181. Defendant denies each and every allegation set forth in Paragraph “181” of Plaintiff’s Complaint.

182. Defendant denies each and every allegation set forth in Paragraph “182” of Plaintiff’s Complaint.

183. Defendant denies each and every allegation set forth in Paragraph “183” of Plaintiff’s Complaint.

184. Defendant denies each and every allegation set forth in Paragraph “184” of Plaintiff’s Complaint.

185. Defendant denies each and every allegation set forth in Paragraph “185” of Plaintiff’s Complaint.

**AS TO “PRAYER FOR RELIEF”**

186. Defendant denies each and every allegation set forth in the Wherefore clause of Plaintiff’s Complaint, and denies that Plaintiff is entitled to any monetary or equitable relief in this action.

**STATEMENT OF AFFIRMATIVE AND OTHER DEFENSES**

187. Defendant asserts the following affirmative and other defenses without assuming any burden of production or proof it would not otherwise have:

**AS AND FOR DEFENDANT’S FIRST DEFENSE**

188. The Complaint fails, in whole or in part, to state any claim upon which relief can be granted or for which the damages sought can be awarded.

**AS AND FOR DEFENDANT'S SECOND DEFENSE**

189. At all times relevant hereto, Defendant has acted in good faith and has not violated any rights, which may be secured to Plaintiff under any federal, state, city or local laws, rules, regulations, codes, collective bargaining agreements, trust agreements or guidelines.

**AS AND FOR DEFENDANT'S THIRD DEFENSE**

190. Plaintiff's claims for damages are barred, in whole or in part, because Plaintiff failed to mitigate her alleged damages.

**AS AND FOR DEFENDANT'S FOURTH DEFENSE**

191. To the extent that discovery reveals Plaintiff failed to report correctly all hours of work, Defendant hereby invokes the doctrines of estoppel, laches, unclean hands and avoidable consequences to bar the claims asserted by Plaintiff.

**AS AND FOR DEFENDANT'S FIFTH DEFENSE**

192. Plaintiff's claims are barred in whole or in part, by the doctrine of accord and satisfaction.

**AS AND FOR DEFENDANT'S SIXTH DEFENSE**

193. Plaintiff's claims against Defendant are barred, in whole or in part, by the applicable statutes of limitations.

**AS AND FOR DEFENDANT'S SEVENTH DEFENSE**

194. Plaintiff's claims are barred or should be reduced, in whole or in part, by exclusions, exceptions, credits, recoupment or offsets permissible under the Fair Labor Standards Act and New York Labor Law.

**AS AND FOR DEFENDANT'S EIGHTH DEFENSE**

195. Payments to Plaintiff were made in good faith and in conformity with and in reliance on an administrative regulation, order, ruling, approval, interpretation, administrative

practice, and/or enforcement policy of the United States Department of Labor and the New York State Department of Labor.

**AS AND FOR DEFENDANT'S NINTH DEFENSE**

196. All claims are barred in whole or in part to the extent that the work performed falls within exemptions, exclusions, exceptions, or credits provided for in Sections 7 or 13 of the Fair Labor Standards Act, 29 U.S.C. § 207 and 29 U.S.C. § 213, or any other exemption set forth in the Fair Labor Standards Act or New York law.

**AS AND FOR DEFENDANT'S TENTH DEFENSE**

197. To the extent that Plaintiff failed to make good faith and diligent effort to mitigate her purported damages and injuries (including, but not limited to, using reasonable diligence to seek comparable employment elsewhere), any relief awarded to Plaintiff should be reduced, in whole or in part.

**AS AND FOR DEFENDANT'S ELEVENTH DEFENSE**

198. Plaintiff's claims of discrimination and/or any recovery of damages are precluded because Defendant exercised reasonable care to prevent and promptly correct any alleged discriminatory and/or retaliatory behavior, including but not limited to, publishing policies prohibiting discrimination and retaliation.

199. Defendant reserves its right to assert such other and further affirmative and other defenses as this matter progresses.

**WHEREFORE**, Defendant respectfully requests the Court to:

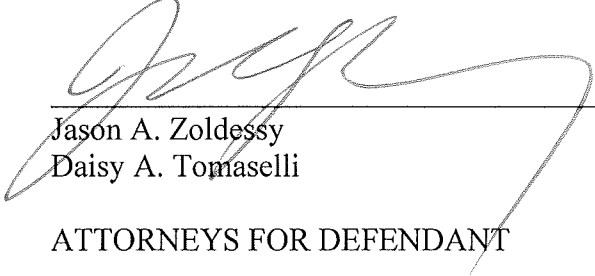
- a. Dismiss Plaintiff's Complaint in its entirety, with prejudice;
- b. Deny each and every demand, claim and prayer for relief contained in Plaintiff's Complaint;

- c. Award Defendant the reasonable attorneys' fees and costs it incurs in defending this action; and
- d. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

JACKSON LEWIS P.C.  
666 Third Avenue  
New York, New York 10017  
(212) 545-4000

By:



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Jason A. Zoldessy  
Daisy A. Tomaselli

ATTORNEYS FOR DEFENDANT

Dated: October 18, 2016  
New York, New York

**CERTIFICATE OF SERVICE**

I hereby certify that on **October 18, 2016** the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

**s/ Daisy A. Tomaselli**  
**Daisy A. Tomaselli**

ATTORNEYS FOR DEFENDANT